IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 116 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BABU IMAMUDDINN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 116 of 1991

MR RR MARSHALL for Petitioner No. 1-2

MR PR ABICHANDANI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/09/2002

ORAL JUDGEMENT

Learned Advocate Mr. Pardiwala had on earlier occasion restricted his argument to the question of grant of benefit of probation to the appellants. Accordingly,

reports from the Chief Probation Officer under the Probation of Offenders Act, Surat were called for. They are now received and they are before the Court.

2. The appellants came to be convicted by Additional Sessions Judge, Surat for offences punishable under Sections 324, read with Section 34 and were sentenced to RI for six months with a fine of Rs. 250/- each, in default to undergo SI for one month. They also came to be convicted for offences punishable under Section 452 of IPC, read with Section 114 of IPC and were sentenced to undergo RI for 3 months and to pay fine of Rs. 250/- each in default to undergo SI for one month.

3. As per the prosecution case, the appellants trespassed into house of Natwarbhai Nathubhai while being armed with deadly weapons on April 10, 1989; after entering the house they caused injuries to Fulchand Ramdas, Natwarlal Nathubhai and Ramilaben. Complaint was lodged, offences registered, investigation made and charge-sheet filed. Case was committed to the Court of Sessions and when charge was framed, accused pleaded not guilty to the charge and claimed to be tried. The Sessions Court after considering the evidence led by the prosecution, recorded conviction as stated above. Hence this appeal.

4. Since learned Advocate Mr. Pardiwala does not challenge the conviction but only prays for the benefit of provisions of Probation of Offenders Act, and since the report is before this Court, that is considered by this Court.

In the report in respect of Babu Imamuddin Shaikh alias Babubhaiya, the report indicates that he is staying at Kumbharia for about 35 to 40 years, and there has not eben any single incident of any dispute or quarrel with village people. It is also found that he understands the seriousness of the incident and gives an assurance that no such incident will occur in fugure. The report indicates that the family members and neighbours as well as office bearers like Talati, Sarpanch etc. have given good opinion about his conduct. It indicated that he lives in a joint family and he is the eldest member of the family. He is dependent on income of his sons and also runs a small hotel. With all these positive indications the Probation Officer has opined that the accused is not ready to accept his fault or guilt and asserts that he is innocent and therefore he may not be granted the benefit under the provisions of Probation of Offenders Act.

5. In the opinion of this Court, with all these positive factual findings recorded by the Probation Officer, there is no reason for not granting the benefit of probation to the accused only because he asserts his innocence. Otherwise his conduct has been good, he has expressed his regret for the incidence and he has assured of non-recurrence of such incidents. Independent officers like Sarpanch, Talati-cum-Mantri, besides the neighbours have also given positive opinion about him and therefore, in the opinion of this Court, after considering the report of the Probation Officer in substance, the benefit of the provisions of Probation of Offenders Act, is required to be extended to this accused.

6. So far as accused Anil Ahmed Babu Sheikh is concerned, he happens to be son of the other accused. About him also the Chief Probation Officer has tendered his report, which is indicative of the fact that his conduct also has been good. There is no criminal antecedents. He has three children and responsibility of parents. He also has assured of non-recurrence of such incidence, has expressed his regret for the incident and in the opinion of the Probation Officer, benefit of the provisions of Probation of Offenders Act, may be given to this accused.

7. Heard, learned Advocate Mr. Abichandani. In the opinion of this Court, as stated above, since considering the conduct of the accused, their antecedents and their repentence, benefit is required to be extended to the appellants. Hence, following order:-

ORDER

The judgement and order of conviction passed by the Additional Sessions Judge, Surat in Sessions Case No. 147 of 1989 on 30.1.1991 is confirmed. However, the sentence in respect of appellants is suspended. Appellants Nos. 1 and 2 Babu Imamuddin Shaikh Kumbaria and Anil Ahmad Babu Shaikh shall be released from jail on their executing a bond of Rs. 5,000/- only for good conduct for a period of one year with surety each of the like amount and to appear and receive the sentence when called upon during this period of one year. Appellants in the meantime shall keep peace and be of good behaviour. The fine if paid be refunded to them. In event they are found to commit breach of the bond, the sentence will become operative and appellants will be liable to the subjected to undergo the sentence imposed

on them. This appeal is accordingly disposed of. Direct service permitted.

(A.L.Dave, J.)

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